

EXHIBIT 13

Lowenstein Sandler

ATTORNEYS AT LAW

Sarah Blaine

Associate

Tel 973 422 6728

Fax 973 422 6729

sblaine@lowenstein.com

May 3, 2010

VIA ECF

The Honorable Esther Salas, U.S.M.J.
Martin Luther King Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *Grossbaum v. Genesis Genetics Institute, LLC, et al.*;
Civil Action No. 07-1359(GEB)(ES)**

Dear Judge Salas:

This firm, along with Stephen N. Leuchtman, Of Counsel to the Trowbridge Law Firm, P.C., represents defendants Genesis Genetics Institute, LLC and Dr. Mark R. Hughes (collectively, "Genesis") in the above-referenced civil litigation. We write in opposition to Plaintiffs' request that the Court order Genesis to make two fact witnesses available for deposition on May 14, 2010. Plaintiffs have already sought (and been denied) this relief on at least three separate occasions, and Genesis will be highly prejudiced if Plaintiffs are allowed to take these fact depositions at the conclusion of expert discovery.

As the Court is aware, fact discovery in this case closed on August 3, 2009. On August 24, 2009, Plaintiffs sent a letter to Genesis regarding Plaintiffs' failure to timely serve their expert reports and requesting, for the first time, that Genesis make additional fact witnesses available for deposition. Genesis refused, and at the September 21, 2009 in-person status conference, this Court ruled that Plaintiffs were not entitled to additional fact discovery. The Court's ruling was memorialized in the September 23, 2009 case management order. *See* Exhibit A. On October 13, 2009, Plaintiffs filed an untimely motion for reconsideration of the Court's denial of additional fact discovery. On November 23, 2009, the Court entered an order denying Plaintiffs' motion for reconsideration. *See* Exhibit B. On December 4, 2009, Plaintiffs appealed the order denying their motion for consideration. On February 9, 2009, Chief Judge Garrett E. Brown, Jr. denied Plaintiffs' appeal. *See* Exhibit C. Those orders are the law of the case, and Plaintiffs have not presented any good cause to set them aside.

Plaintiffs present no arguments or reasoning setting out why they need additional fact discovery. Instead, they argue that "it would appear to be of little adverse consequence to this Defendant as well as NYU to allow the Plaintiff to depose two of Defendant Hughes' employees who are situated in Detroit at the Genesis Genetics location on the same day as Dr. Hughes' deposition of May 14th." Plaintiffs' assessment of the harm is just plain wrong: Genesis would be highly prejudiced by being forced to (1) make two additional fact witnesses available to be deposed

Lowenstein Sandler PC In California, Lowenstein Sandler LLP

www.lowenstein.com

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after the conclusion of the liability experts' depositions, (2) do so on ten days' notice and (3) do so during the same 48-hour period in which its liability experts are being deposed halfway across the country from each other.

First, as Plaintiffs set out in their letter, all of the liability expert depositions will have been completed by May 14, 2010. The experts drafted their reports and gave their depositions based on the current record. Allowing additional facts to be introduced following the conclusion of the expert discovery process introduces a serious risk that the expert reports may need to be supplemented and the liability experts' depositions may need to be reopened. *Second*, the current case management order calls for dispositive motions to be filed no later than June 11, 2010. Reopening fact -- and, consequently, expert -- discovery will prejudice Genesis by once again seriously delaying the briefing of summary judgment motions and, if necessary, trial of the case. *Third*, despite the roadblocks thrown in its path by Plaintiffs' repeated unilateral rescheduling of their liability experts' depositions, Genesis has endeavored in good faith to comply with the deadlines in the Court's case management order, including scheduling the depositions of its liability experts on consecutive days in New York City and Michigan. Burdening Mr. Leuchtman with the task of preparing for and defending two fact witness depositions during the same 48-hour period in which he is flying across the country to defend the depositions of his two liability experts is simply unfair, and would be highly prejudicial to Genesis.

Genesis respectfully requests that this Court once again refuse Plaintiffs' untimely and unduly burdensome request to reopen fact discovery. Because this is Plaintiffs' fourth attempt to convince the Court to grant it this relief, Genesis also respectfully requests that the Court award Genesis the costs it incurred responding to Plaintiffs' fourth attempt to reopen fact discovery.

Respectfully submitted,



Sarah Blaine

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Enclosures

cc: All counsel via ECF